(2)

No. 90-1901

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

ESTATE OF KATHLEEN JO PRICE, DECEASED,
JANINE ADAMICK, individually, and
JOSEPH ADAMICK, individually, and
JANICE M. HAYES, Real Party in Interest,

Petitioners,

vs.

BALLY'S GRAND, BALLY'S GRAND, INC.,
fka MGM GRAND HOTEL, INC., et al,
as to ELIAS GHANEM, THOMAS BYER and
LAS VEGAS MEDICAL CENTERS, only appellees
in lower court, on consolidated appeals
from collateral orders,

Respondents.

Petition For Writ Of Certiorari
To The Supreme Court Of Nevada

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I

Has petitioner failed to present with accuracy, brevity, and clarity the points requiring consideration by the Court so as to violate Sup. Ct. R. 14.5 and make the grant of certiorari inappropriate here?

II

Here, the Federal District Court held, based on the facts before it, that petitioner should be sanctioned for filing papers which violated Fed.R.Civ.P. 11; that counsel for respondents should not be so sanctioned; and that sanctions petitioner paid into the registry of the court should be released to respondents. Petitioner then appealed from these orders and the court of appeals affirmed the trial court's exercise of discretion. Where the propriety of the trial court's exercise of discretion and the court of appeals' affirmation thereof are the only issues on appeal, is the grant of certiorari appropriate?

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No. 90-1901

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Petition For Writ Of Certiorari
To The Supreme Court Of Nevada

BRIEF IN OPPOSITION

Respondents respectfully submit this brief in opposition to the petition for writ of certiorari to the Supreme Court of Nevada that was filed on May 30, 1991, by the petitioner.

STATEMENT OF THE CASE

Petitioner, Janice Hayes (Hayes), counsel for plaintiffs in the trial court, appealed from three separate orders issued by the United States District Court for the District of Nevada in this action. The first, entered July 8, 1987, and based on a detailed report by the federal magistrate to whom the question had been referred (Appendix at 1-21), imposed sanctions upon Hayes personally in the amount of $3,000, payable to defendants below and respondents here, Elias Ghanem, M.D., Thomas Byer, M.D., and the Las Vegas Medical Center (Medical Center defendants). Appendix, at 31-33. Hayes filed a notice of appeal from this and several other orders on August 7, 1987, and eventually deposited $3,000 cash in lieu of a supersedeas bond with the clerk of the court to be held pending resolution of her appeal of the order imposing sanctions. Appendix, at 34-35. Upon receipt of these funds, execution on Hayes for the amount of sanctions was stayed. *Id.*

That appeal was assigned Case No. 87-2575 by the Ninth Circuit Court of Appeals, which issued an order dismissing it in its entirety on April 20, 1989, because most of the orders appealed from were not final (Appendix, at 22). Since this order appeared to allow the district court's imposition of sanctions upon Hayes to stand unmodified, the Medical Center defendants moved for release to them of the funds she had paid into the registry of the court. Hayes responded with a motion for sanctions against both the Medical Center defendants and their counsel, and a motion to strike. By way of an order entered on June 15, 1989, the district court released the

funds paid into its registry to the Medical Center defendants and denied Hayes' motion for sanctions. Appendix, at 23-24. Hayes then took an appeal from the June 15, 1989 order releasing sanctions to the Medical Center defendants. The Ninth Circuit Court of Appeals assigned this appeal No. 89-16462.

On September 1, 1989, in response to Hayes' motion for reconsideration or clarification, the court of appeals entered an order reinstating Case No. 87-2575 insofar as it dealt with the imposition of sanctions on Hayes. Appendix, at 25. While the bulk of the orders Hayes appealed from were not final and appealable, the court found it had jurisdiction to hear an appeal of the order awarding sanctions only. *Id.* The court subsequently consolidated Case No. 87-2575 with Case No. 89-16462. Appendix, at 26-27. The only issues before the court of appeals were thus whether or not the district court's discretion had been properly exercised in imposing sanctions upon Hayes, releasing the amounts she had paid into the registry of the court to the Medical Center defendants, and in denying Hayes' motion for sanctions against counsel for the Medical Center defendants. After receiving the briefs of the parties and hearing their oral argument, the United States Court of Appeals for the Ninth Circuit affirmed the exercises of judicial discretion appealed from in all respects by way of a memorandum order entered on November 21, 1990. Appendix, at 28-29.

After the Circuit Court of Appeals denied Hayes' motion for rehearing and for correction of clerical errors, Hayes filed the instant petition for writ of certiorari seeking review of the November 21, 1990 order.

The district court subsequently entered a final judgment on all claims, in favor of all defendants and against all plaintiffs on February 22, 1989. Appendix, at 30. There has been no appeal from that judgment.

SUMMARY OF ARGUMENT

I. Supreme Court Rule 14.5 requires that the points which petitioner wishes the court to consider be presented with "accuracy, brevity, and clearness." Petitioner has failed to do so in this case, making the grant of certiorari inappropriate.

II. The only issue on appeal here is whether or not the district court properly exercised its discretion as outlined in the Statement of the Case above. The court of appeals had before it all of the facts available to the district court, including copies of the papers of both sides which allegedly violated Fed.R.Civ.P. 11, and found that the district court had properly exercised its discretion. In effect, the instant petition does nothing but ask this court to repeat that analysis in the hopes that it will come to a different conclusion. That a litigant disagrees with the outcome of her lawsuit and appeal is not of itself sufficient reason to grant the writ sought. The petition offers nothing else which might be sufficient and ought, therefore, to be denied.

ARGUMENT

I. THE PETITION FAILS TO PRESENT THE POINTS WHICH PETITIONER WISHES THE COURT TO CONSIDER WITH THE ACCURACY, BREVITY, AND CLARITY REQUIRED BY THE RULES OF THIS COURT.

Sup. Ct. R. 14.5 provides as follows:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

In this regard, the petition speaks most eloquently for itself. Even a thorough reading of it does not inform the reader even of what issues were properly before the court of appeals, much less why review of its decision by writ of certiorari is appropriate. As the rule states, the petition should be denied.

II. THIS CASE PRESENTS NO ISSUES WORTHY OF REVIEW BY THIS COURT ON WRIT OF CERTIORARI.

In Sup.Ct.R. 10, this court has specified those features which a case must present before it will be considered worthy of review by writ of certiorari. The court identified the sort of issues worthy of this kind of review as follows:

> a. When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted

> and usual course of judicial proceedings, or sanctioned such a departure by a lower court as to call for an exercise of this court's power of supervision.
>
> b. When a state court of last resort has decided a federal question in a way that conflicts with a decision of another state court of last resort or a United States Court of Appeals.
>
> c. When a state court or a United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way that conflicts with the applicable decisions of this court.

U.S.Sup.Ct.R. 10.1(a) through (c).

Although Hayes fails to make it explicit in her petition, it seems that she is relying on the first two considerations contained in Rule 10. In her petition, Hayes first alleges that there is a conflict between federal circuit courts of appeals necessitating resolution by this court. However, Hayes points to no holding of another circuit court of appeals which in any way conflicts with the holding of the Ninth Circuit being appealed from here. So far as counsel for respondents have been able to ascertain, no such decisions exist.

The petition can also be read to allege actions by the district court and court of appeals which were allegedly so far outside the accepted and usual course of judicial proceedings as to call for an exercise of the court's powers of supervision. However, none of the allegations made by Hayes are supported by citations to the record or anything else. Completely aside from the violation of

this court's rules thus presented, unsubstantiated accusations of judicial malfeasance (even if cogently described, as petitioner's are not) do not provide enough of a foundation to support a writ of certiorari.

When stripped to its essence, the instant petition for certiorari is no more than a statement that Hayes disagrees with the district court's exercise of discretion and the court of appeals' affirmance of that exercise. However, the district court had observed Hayes' conduct in this litigation as well as that of the Medical Center defendants and their counsel, and had before it all of the facts upon which it could base a conclusion that the former was worthy of sanction while the latter was not. The court of appeals had before it the same information and, after reviewing the record and the briefs submitted by the parties, found that the district court's discretion had been properly exercised and so held.

With regard to the release of funds to the Medical Center defendants, the court of appeals held that its own order initially dismissing Appeal No. 87-2575 was reasonably interpreted by the District Court as disposing of the appeal so as to dissolve any stay of execution and allow the sanctions to be released. The instant petition is no more than an invitation for this court to review the very same information and record in the hopes that it might reach a different conclusion. Again, this does not constitute the sort of issue worthy of consideration by this court on a writ of certiorari. Accordingly, the grant of the writ sought is inappropriate here.

———♦———

CONCLUSION

Respondents respectfully urge that the instant petition for writ of certiorari be denied, the petitioner having brought nothing to the attention of the court indicating either that this case represents an unresolved question of law which it should decide or that any action by a lower court was so beyond the usual scope of judicial proceedings that this court is obligated to exercise its supervisory authority.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ESTATE OF KATHLEEN JO PRICE, etc., et al., Plaintiffs, v. MGM GRAND HOTELS, INC., et al., Defendants.	CV-S-84-447-HDM ORDER (Filed May 22, 1987)

On January 27, 1987, Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER filed a Motion for Sanctions (#154). On March 4, 1987, Defendants' Motion was referred to the undersigned Magistrate for consideration. On March 9, 1987, the undersigned Magistrate ordered Plaintiffs to respond to Defendants' Motion for Sanctions by March 23, 1987 (#166), with which Order Plaintiffs complied (#173). On March 31, 1987, Defendants filed a Reply (#176).

On April 6, 1987, a hearing was held before the undersigned Magistrate and arguments were heard in support of and in opposition to Defendants' Motion for Sanctions (#177).

To put Defendants' Motion for Sanctions now before the Court in proper perspective, a partial review of the procedural history of this case is helpful.

On January 7, 1986, the Honorable Howard D. McKibben heard oral arguments on Defendants' Summary Judgment Motion and granted the Motion from the bench (#68). In the Minutes of the Court filed January 9, 1986, the Court ordered Plaintiffs to amend the Complaint within five days "on the items discussed in open court . . . " (#68).

Plaintiffs filed a Second Amended Complaint (#70) on January 14, 1986, and named all Defendants who had been previously granted Summary Judgments on January 7, 1986, including Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER.

On February 26, 1986, the Court filed its written Order granting Summary Judgment for Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER (#90) on the First Amended Complaint. The Court held that Plaintiffs had no claim under the Rehabilitation Act, Title 29, United States Code, Sections 793-795, and that accordingly, there was no adequate basis to take pendent jurisdiction of Plaintiffs' state law claims. On February 18 through 27, 1986, the Court also filed Summary Judgment Orders and Orders to Dismiss for all other Defendants previously granted Judgments on January 7, 1986 (#83, #84, #85, #86, #87 and #89).

On March 13, 1986, Plaintiffs filed a Motion to Vacate, Amend or Alter Order Entered on February 27, 1986, Granting BYER, GHANEM and LAS VEGAS MEDICAL

CENTER's Motion to Dismiss for Want of Jurisdiction without Prejudice (#98).[1]

Plaintiffs argued that the Court's Order to Dismiss Defendants from the First Amended Complaint was incorrect and that the proper remedy was to permit Plaintiffs to amend their Complaint. Plaintiffs reasoned that since the Plaintiffs had already filed their Second Amended Complaint before the Court's written Order was filed on February 26, 1986, the Defendants should be required to respond to that Complaint (#98, p. 3). On March 20, 1986, Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER filed an Opposition to Plaintiffs' Motion (#101). On May 19, 1986, the Court denied Plaintiffs' Motion to Vacate, Amend or Alter the Order of February 27, 1986 (#108). Other Defendants who had previously been dismissed received similar Orders.

At the same time the Court was considering Plaintiffs' Motion to Amend or Alter the Orders to Dismiss Defendants BYER, GHANEM and LAS VEGAS MEDICAL CENTER (#98), the same Defendants were contending with the Second Amended Complaint filed on January 14, 1986. In response to the Second Amended Complaint, Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER filed a Motion to Strike and Motion for Sanctions (#73) on January 17, 1986.[2]

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[1] Plaintiffs filed similar Motions against all other Defendants who had been granted Summary Judgment or Motions to Dismiss (#95, #96 and #99).

[2] Other Defendants similarly situated also filed Motions to Strike and for Sanctions (#75, #77 and #78).

On February 7, 1986, Plaintiffs filed a Response (#79) and argued that the Second Amended Complaint was properly filed despite the dismissal of the three Defendants from the First Amended Complaint. Plaintiffs contended that at the hearing on January 7, 1986, the Honorable Howard D. McKibben made "inconsistent oral orders" (Response #79, p. 4) in that the Plaintiffs were ordered to amend their Complaint within give days and all the Defendants who were granted Summary Judgment were ordered to prepare Findings of Fact and Order and submit these to the Court also within five days. Plaintiffs argued that the Court's Order did not allow the Plaintiffs time to review the Summary Judgment Order and, therefore, Plaintiffs felt compelled to include the same Defendants in the Second Amended Complaint to reserve their rights against all Defendants. Additionally, Plaintiffs argued that if the Defendants had not been renamed in the Second Amended Complaint, "Plaintiffs would be deprived of their right to seek review in this Court and appellate review of the order granting summary judgment . . . " (#79, p. 6). No case law was cited to support these contentions. By this filing, Plaintiffs also made a Cross Motion for Sanctions against Defendants challenging Defendants' motives in filing Motions to Strike.

On February 14, 1986, Defendants filed a Response (#81). On February 27, 1986, Plaintiffs filed a Reply to the Motion for Sanctions (#93).

On April 28, 1986, the Court granted Defendants BYER, GHANEM and LAS VEGAS MEDICAL CENTER's Motion to Strike all reference to them from Plaintiffs' Second Amended Complaint (#104, p. 2). The accompanying Motion for Sanctions by Defendants was denied.

By its Order of April 28, 1986, the Court also granted the Motions to Strike filed by the other Defendants (#104, p. 2-4). Additionally, Defendant MGM's Motion to Strike (#78) requested that the Court strike from the Second Amended Complaint all claims under the Equal Pay Act, RICO, and Title 42, United States Code, Sections 1983, 1985, and 1986. The Court granted these requests and stated in its Order:

> As to the other claims which this Court now dismisses, Plaintiffs have improperly amended their complaint by adding new claims not originally pled. At the January 7, 1986 hearing, Plaintiffs' counsel was instructed to amend the complaint in order to provide the Court and all parties with a more cogent statement of the causes of action alleged. This Court did not grant Plaintiffs leave to add new claims. Accordingly, the newly added claims based on RICO and 42 U.S.C. Sections 1983, 1985 and 1986 are hereby DISMISSED. As to [the request for sanctions], this Court hereby finds that the conduct of Plaintiffs' counsel is sufficiently egregious to warrant the imposition of sactions (sic). Counsel's (1) refusal to comply with the court-approved stipulation removing "MGM Grand Hotels, Inc. and Certain Subsidiaries" as a proper party defendant, (2) unauthorized attempt to add new claims to the complaint, and (3) improper representation to this Court and counsel for Defendant that Plaintiffs' Equal Pay Act claim had not been voluntarily relinquished and officially dismissed by the Court at the January 7, 1986, hearing have resulted in the unfortunate and unnecessary expenditure of valuable resources by this Court and Defendants' counsel (#104, p. 4).

The Court ordered Plaintiffs' counsel to pay Defendant MGM $200.00 to partially compensate Defendant for the cost of defending Plaintiffs' Motions.

Apparently, the January 7, 1986, hearing before the Court and the Court's Order of February 26, 1986, which dismissed Defendants from the First Amended Complaint and the Court's Order of April 28, 1986, which granted Defendants' Motion to Strike their names from the Second Amended Complaint did not yet convince Plaintiffs that it was procedurally incorrect to include previously dismissed Defendants or to expand the claims for damages in the Second Amended Complaint. Therefore, Plaintiffs filed a Motion to Amend or Vacate the Order entered on April 30, 1986, accompanied with a demand for a hearing (#107).

By their Motion to Amend or Vacate the April 30, 1986, Order, Plaintiffs urged the Court to allow the RICO claims to stand in the Second Amended Complaint. Additionally, Plaintiffs requested the Court Order of April 28, 1986, be amended to permit the Plaintiffs to include Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER and the other dismissed Defendants in the Second Amended Complaint because they were necessary parties to fully litigate the RICO claims (#107, p. 3).

Plaintiffs also urged the Court to reconsider the $200.00 in sanctions granted to Defendant MGM. Plaintiffs argued that Defendant MGM was properly named in the Second Amended Complaint because the Stipulation with MGM on this subject referred only to MGM GRAND HOTELS, INC., and MGM GRAND HOTEL-LAS VEGAS, INC., and it did not refer to "MGM GRAND HOTELS,

INC. and CERTAIN SUBSIDIARIES, INC." Additionally, Plaintiffs stated that they did not recall any stipulation with MGM to dismiss the Equal Pay Act and requested MGM to provide Plaintiffs with a copy of the January 7, 1986, hearing transcript.

Also, Plaintiffs complained that no hearing had been convened regarding the imposition of sanctions as required under Local Rule 13(f) [Rule 100-3, effective July 1, 1986].[3]

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[3] Contrary to Plaintiffs' assertion, such a hearing is not mandated. In *Rodgers v. Lincoln Towing Service, Inc.*, 771 F.2d 194, 205 (7th Cir. 1985), the Court reviewed the Advisory Committee Notes and quoted:

> The procedure [of imposing sanctions] obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provide him with full knowledge of the relevant facts and little further inquiry will be necessary.

In the instant case, a hearing was convened on January 7, 1986, to hear arguments on Defendants' Summary Judgment Motions and at that time Plaintiffs were directed to file a Second Amended Complaint which would reflect the discussions had in open Court. Following the filing of the Second Amended Complaint (#70), the Court was inundated with Motions, Countermotions and Responsive Pleadings which detailed the ongoing concerns of all the parties. When the Court ordered Defendants' names to be stricken from the Second Amended Complaint (#104), the Court determined that Plaintiffs had, contrary to the directions of the Court during the Summary Judgment hearing, pled new causes of action. Accordingly, the Court had all the necessary information before it and a hearing would have served no useful purpose. *Rodgers v. Lincoln Towing Service, Inc., supra,* at 205.

Plaintiffs' last argument for reconsideration of the April 28, 1986 Order centered on the number of Motions which were heard by the Court at the hearing regarding the Summary Judgment Motion held on January 7, 1986, stating at p. 4:

> Plaintiffs also point out that they did not 1have (sic) a fair chance to present their arguments at the hearing on six motions for summary judgment.
>
> This court caused all six to be scheduled for the same time, or perhaps it was five, whereas the local rules provide that each side shall have 30 minutes to argue each motion.
>
> In addition, the court granted the last minute request of Andrew Brignone, Esq. that the time of the hearing be changed to 5 p.m. so that he could be present, although he was not the attorney who had been handling the case, but was apparently his supervisor.

On May 27, 1986, Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER filed their Opposition (#109). Additionally, apparently motivated by Plaintiffs' predeliction to object to every Court Order dismissing Defendants, the Defendants requested the Court "for an order prohibiting Plaintiffs from filing additional motions pertaining to these Defendants in this litigation." (#109, p. 2). On June 9, 1986, Plaintiffs filed their Reply and Opposition to Defendants' Motion for an Injunction and for Sanctions (#111).

On September 11, 1986, the Honorable Howard D. McKibben conducted a hearing on the aforementioned Motions. Both Plaintiffs' Motion to Amend or Vacate the

Defendant MGM's Countermotion for Sanctions were denied (#114).

The Court's denial of the Motion to Amend or Vacate the Order of April 30, 1986, affirmed a $200.00 sanction levied against Plaintiffs (#104). Since the Plaintiffs had exhausted all avenues of appeal at the District Court level, an appeal to the Ninth Circuit was initiated by Plaintiffs on the issue of the $200.00 sanction award.

The Court's Order denying Plaintiffs' Motion to Vacate the award of the $200.00 sanction was entered on September 11, 1986, which allowed Plaintiffs thirty days to appeal, by October 11, 1986. On November 10, 1986, Plaintiffs filed a Motion for Extension of time to File Notice of Appeal Pursuant to Rule 4(a) of the Federal Rules of Apellate (sic) Procedure (#121). Plaintiffs *concurrently* filed a Notice of Appeal (#122).

On November 25, 1986, Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER filed an Opposition to the Extention of Time to file Notice of Appeal (#127). On December 18, 1986, Plaintiffs filed their Reply (#135).

On December 23, 1986, the undersigned Magistrate denied Plaintiffs' Motion for an Extension of Time to File Notice of Appeal (#138). On January 9, 1987, Plaintiffs filed Objections to this Order and Motion to Quash and Vacate Magistrate's Order (#146) arguing that a Motion for Extension of Time to File Notice of Appeal is not a pretrial matter, but rather a final Order which the Magistrate may not hear. Also, the parties did not given written consent to proceed before the Magistrate. This Objection is currently under submission to the District Court.

After Plaintiffs filed the Notice of Appeal on November 10, 1986, Plaintiffs argued that the litigation was stayed until the appeal of the Order for $200.00 sanctions was decided by the Ninth Circuit. To put this argument before the Court, on December 24, 1986, Plaintiffs filed an Ex Parte Motion for a Stay of Proceedings, except Disposition of Motion to File Late Notice of Appeal, Pending Resolution of Appeal, and Motion to Vacate Orders Entered after Notice of Appeal was filed (#140).

By their Motion, Plaintiffs argued that the filing of a Notice of Appeal divested the District Court of jurisdiction to proceed. Therefore, the District Court was asked to vacate any and all Court Orders issued after Plaintiffs filed a Notice of Appeal on November 10, 1986.[4]

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[4] Plaintiffs specify in their Motion the following Court Orders to be vacated:

1. Magistrate Pro's November 12, 1986 Order substituting BALLY GRAND INC. and denying extension of discovery (#125). Motion was denied, Order Adopting Magistrate's Recommendation (#157); but now pending, Plaintiffs' Motion to Clarify and Supplement Order or, in the Alternative, to Amend or Alter Order (#163); and

2. The Court Order dealing with TRANSAMERICA's Certification of Final Judgment filed on December 5, 1986 (#129); Denied, Judgment on Decision by the Court (#152), filed January 26, 1987. Plaintiffs then filed a Motion to Correct Order of January 26, 1987 Nunc Pro Tunc to Reflect that Action is Dismissed on Merits as to Defendant TRANSAMERICA Only, or in the Alternative, Motion to Amend or Alter Order and for Additional Findings of Fact and Conclusions of Law (#161). On March 12, 1987, the Court filed a limited Amended Order (#169).

On December 30, 1986, the undersigned Magistrate determined that the Court could not consider Plaintiffs' Motion on an Ex Parte basis and Ordered Plaintiffs to serve the Motion on the Defendants (#139). On January 2, 1987, Plaintiffs filed and served the aforementioned Motion (#140).

On January 7, 1987, the undersigned Magistrate denied Plaintiffs' Motion to Stay Proceedings and Motion to Vacate Orders Entered After Notice of Appeal was Filed (#143) and the undersigned Magistrate attached to the Order a memorandum of the Court regarding proper format for ex parte motions.

After filing the Motion for a Stay of Proceedings, Plaintiffs refused to respond to pending Motions unless so ordered by the Court arguing that the Court was divested of jurisdiction. Also, to preserve this issue for appeal, Plaintiffs' responses were always prefaced with objections. Accordingly, Plaintiffs made the following Motions:

1. On November 26, 1986, Plaintiffs filed an Ex Parte Motion for Extension of Time to File Pretrial Memorandum, Without Waiving Objection that the Court has been Divested of Jurisdiction (#127A). Motion was denied on December 18, 1986, by undersigned Magistrate; parties ordered to file Joint Pretrial Order on or before January 16, 1987 (#136);

2. On December 18, 1986, Plaintiffs' Motion to Amend or Vacate the Order Entered on December 5, 1986 Certifying the Order Granting TRANSAMERICA INSURANCE COMPANY's Motion to Dismiss as a Final Judgment under F.R.C.P. 54(b) (#137);

3. On January 7, 1987, Plaintiffs filed an Ex Parte Motion to Quash or Vacate Magistrate's Order Entered on December 18, 1986 for Want of Jurisdiction, or alternatively, Objections to Magistrate's Order (#144); On March 12, 1987, the Court filed an Order Adopting Magistrate's Order (#171) and clearly delineated the jurisdiction of the Magistrate and ordered that a Joint Pretrial Memorandum be filed by April 10, 1987. However, on March 31, 1987, Plaintiffs filed an Ex Parte Motion to Amend, Alter or Vacate Order of March L2 (sic), 1987 as (1) an Appeal is Pending Before the Court of Appeals and Neither the Magistrate nor Judge has jurisdiction, and (2) this Court has not Ruled on the Motion to Stay Proceedings Which is Unopposed (#174) which is now pending.

4. On January 9, 1987, Plaintiffs filed a document entitled:

> I. Plaintiffs' Reply to MGM Defendants' Opposition to Ex Parte Motion, with Notice to Other Parties, for extension of time to File Parties' Joint Pretrial Memorandum, Made Without Waiver of Plaintiffs' contention that Court has no Jurisdiction to Conduct Further Proceedings
>
> II. Plaintiffs' Motion to Strike MGM's Opposition
>
> III. Plaintiffs' Motion for Sanctions, Made Without Waiver of Contention that this Court Lacks Jurisdiction (#145).

This Motion is now pending.

5. On January 9, 1987, Plaintiffs also filed Plaintiffs' Ex Parte Motion *With Notice to Parties,* to Quash and Vacate Magistrate's Order of December 23, 1986, for Want of Jurisdiction and Consent, or in the Alternative, Objections to

Magistrate's Order, Without Waiver of Plaintiffs' Contentions Re Jurisdiction of Court (#146). This Motion is now pending.

6. On January 22, 1987, Plaintiffs' Ex Parte Motion, *With Notice to Parties*, to Vacate Magistrate's Order of January 7, 1987, for Want of Jurisdiction, or Alternatively, Objections to Magistrate's Order and Request for Findings of Fact (#151). This Motion is now pending.

Plaintiffs' attempts to perfect an appeal to the Ninth circuit regarding the Court's Order of $200.00 in sanctions against Plaintiffs caused considerable expenditure of resources for the Defendants and the court. Defendant MGM, the Defendant awarded the $200.00 sanctions, filed a Disclaimer of Interest with the Court on February 13, 1987, in an attempt "[t]o avoid further delays in the orderly resolution of this case." (#158, p. 2).

However, this effort had little effect on Plaintiffs. On March 3, 1987, Plaintiffs filed Objections to "MGM Disclaimer of Interest in Sanction Award" (#164). Plaintiffs' Objections included the following:

1. There is no Order from the District Court stating that said sanction was not awarded or has been stricken and MGM has not sought such relief from the Court.

2. The sanction was imposed because Plaintiffs (1) included "MGM Grand Hotels, Inc." and "MGM Grand Hotels and Certain Subsidiaries" as Defendants in their Second Amended Complaint and (2) because Plaintiffs included claims under the Civil Rico Act in their Complaint.

3. An imposition of sanctions for civil contempt is an immediately appealable Order as is an award of sanctions against an attorney.

> 4. MGM has not proposed that Plaintiffs be allowed to include the new claims, the stricken Defendants and responses to the Second Amended Complaint by all Defendants.
>
> 5. MGM's "disclaimer" was filed in bad faith for the sole purpose of attempting to defeat the jurisdiction of this Court and deprive appellants of the opportunity to fully litigate their claims.
>
> 6. MGM has not tendered payment of the $200.00 which Plaintiffs have paid to it.
>
> (#164, Ex. 1, p. 3).

Plaintiffs' perception of the extent of sanctions exceeded the $200.00 ordered by the Court. The papers filed with the Court indicate that Plaintiffs would accept the disclaimer of Interest filed by Defendant MGM only if Plaintiffs were allowed to maintain the Second Amended Complaint as originally filed. This, of course, would contradict the Order of the Court.

On March 12, 1987, Defendant BALLY filed its Response (#168). Attached was a letter (Exhibit A) indicating that the $200.00 sanction was returned to Plaintiffs.

On March 31, 1987, Plaintiffs filed their Reply (#175), which again delineated Plaintiffs' belief that the Second Amended Complaint should include the additional federal claims and name all dismissed Defendants. No case law was cited in support of this contention. Plaintiffs argued that the award of sanctions was for "including the Equal Pay Claims in the Second Amended Complaint of Right. As Plaintiffs have shown, removal of the Equal Pay claims will also remove the jurisdictional predicate permitting the filing of Plaintiff's original Complaint, and thus extinguish all of Plaintiffs' claims under that Act and

Title VII of the Equal Rights Act." This Motion is now pending.

By their Motion for Sanctions (#154) now before the Court, Defendants contend that Plaintiffs have repeatedly attempted to circumvent the Orders of this Court by filing Motions interposed to delay the dismissal of Defendants from this litigation. Defendants seek sufficient Rule 11 sanctions "to avert any further protraction of Defendants' involvement in this case." (#154, p. 60).

With objections as to the jurisdiction of the Court, Plaintiffs responded to the Motion for Sanctions (#173) pursuant to the undersigned Magistrate's Order (#166). Additionally, Plaintiffs contend that the Court has not ruled on other Motions before the Court and, therefore, ruling on the Motion for Sanctions is inappropriate.

Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The signature of an attorney . . . constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the

> court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Subjective bad faith is not necessary to impose sanctions under Rule 11. *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829 (9th Cir. 1986); *Orange Production Credit Association v. Frontline Ventures Limited*, 792 F.2d 797, 800 (9th Cir. 1986). Rather, sanctions under Rule 11 are appropriate when a pleading which has been filed is "so without factual and legal foundation that it can be considered frivolous or unreasonable." *Zaldivar v. City of Los Angeles*, 590 F.Supp. 852, 857 (C.D. Cal. 1984); *See also Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537-38 (9th Cir. 1986); *Zaldivar*, 780 F.2d at 831; *Orange Production*, 792 F.2d at 800. "If a lawyer pursues a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound, the conduct is objectively reasonable and vexatious." *In re TCI Ltd.*, 769 F.2d 441, 445 (7th Cir. 1985). The Seventh Circuit further stated, "litigation must be grounded in an objectively reasonable view of the facts and the law. If it is not, the lawyer who proceeds recklessly – not his innocent adversaries – must foot the bill." *Id.* at 450.

The Advisory Committee Note accompanying the 1983 Amendment of Rule 11 instructs the Court to "test the signer's conduct by inquiring what was reasonable to

believe at the time the pleading was submitted." Hindsight is an inappropriate guideline. *Zaldivar, supra,* 780 F.2d at 830-31.

The *Zaldivar* Court defined "harassment" as an act which does

> more than in fact both, annoy or vex the complaining party. Harassment under Rule 11 focuses upon the improper purpose of the signer, objectively tested, rather than the consequences of the signer's act, subjectively viewed by the signer's opponent. . . . Without question, successive complaints based upon propositions of law previously rejected may constitute harassment under Rule 11.
>
> *Id.* at 832.

A review of the case file in the instant litigation is a monumental task, complicated by the numerous motions filed by Plaintiffs to review Court Orders. Motions to review must be reasonable and supported by propositions of law.

> Rule 11 requires counsel to study the law before representing its contents to a federal court. An empty head but a pure heart is no defense. The Rule requires counsel to read and consider before litigating. Counsel who puts the burden of study and illumination of the defendants or the court must expect to pay attorneys' fees under the rule. . . . The test under Rule 11 is objective. . . . The point, rather, is that every lawyer must do the necessary work to find the law *before* filing the brief. It is not acceptable to make an assertion of law and hope that it will turn out to be true.

Thornton v. Wahl, 787 F.2d 1151, 1154 (7th Cir. 1986) (citations omitted) (emphasis in original).

Plaintiffs were instructed in open court on January 7, 1986, to file a Second Amended Complaint to provide the Court and parties with a clearer statement of the causes of action. At this same hearing, Plaintiffs' counsel addressed the Court and then heard the Court order Summary Judgments and Orders for dismissal on behalf of Defendants. At this juncture, Defendants GHANEM, BYER and LAS VEGAS MEDICAL CENTER could have reasonably believed that they were no longer parties to this litigation. Plaintiffs, by various Motions to the Court, have caused Defendants to continue in the litigation for an additional fourteen months.

On January 14, 1986, seven days after the Court had dismissed Defendants, Plaintiffs filed their Second Amended Complaint and named the Defendants again, alleging the same charges and adding other Federal charges. This filing clearly violated the Court's Order of January 7, 1986, as to the parties and the causes of action.

The Court later granted Defendant's Motion to Strike, again removing Defendants from the litigation. Plaintiffs filed Motions to Vacate or Amend the Order granting the Motion to Strike and, thereby, caused Defendants to continue with this litigation. Defendants had to file responsive pleadings to all the Plaintiffs' Motions causing considerable expenditure of time and money.

Rule 11 does not require a hindsight review of the filings. Therefore, the fact that Plaintiffs' Motions have yet to prevail before the District Court is not determinative of the issue of sanctions. The standard by which these filings are to be judged is an objective standard at

the time of the filing. *Zaldivar, supra,* 780 F.2d 823, 829 (9th Cir. 1986).

At issue is whether counsel for Plaintiffs made appropriate inquiry of the facts and the law before filing the Second Amended Complaint, the numerous Motions to Vacate or Amend Court Orders, and using the Notice of Appeal which was not timely filed to frustrate the efforts of the parties and the Court from going forward with this litigation.

Counsel for Plaintiffs made no record either in writing or orally during the hearing before the undersigned Magistrate regarding the types of research which was completed before initiating the aforementioned actions. Plaintiffs' Points and Authorities filed in support of the Motions and responsive pleadings cited no case law support for the Motions, but simply reiterated the Plaintiffs' reasons for continuing to insist that the parties and the causes of action pled in the Second Amended Complaint were necessary to the resolution of Plaintiffs' claims.

Plaintiffs also complain that the refiling of the Complaint within five days allowed insufficient time to evaluate the papers which Defendants were ordered to submit to the Court regarding their dismissals. This argument is not credible because counsel for Plaintiffs was present when the Court orally granted the dismissals of Defendants and directed Defendants to file papers with the Court. Counsel for Plaintiffs participated in the hearing before the District Court on January 7, 1986, and cannot now argue that the Second Amended Complaint improperly named Defendants and enlarged the causes of action because she was concerned about the contents of the

Defendants' dismissal papers. Counsel particpated [sic] and heard the Court's decision. Defendants were ordered to put the decision in a written format, not decide the issue or determine its scope. Plaintiffs' counsel has not persuaded the Court that Order to refile the Complaint within five days was not sufficient time.

The Ninth Circuit has evaluated the impact of a Summary Judgment ruling and objection to such a ruling.

> It is obvious from the text of the Rule that the pleader need not be correct in his view of the law. Thus the granting of a motion to dismiss the complaint for failure to state a claim, or the granting of a summary judgment against the pleader is not dispositive of the issue of sanctions. The pleader, at a minimum, must have a "good faith argument" for his or her view of what the law is, or should be. A good faith belief in the merit of a legal argument is an objective condition which a competent attorney attains only after "reasonalbe inquiry." Such inquiry is that amount of examination into the facts and legal research which is reasonable under the circumstances of the case. Of course, the conclusion drawn from the research undertaken must itself be defensible. Extended research alone will not save a claim that is without legal or factual merit from the penalty of sanctions.
>
> *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830-31 (9th Cir. 1986).

The actions of counsel for Plaintiffs leads to only one conclusion – sanctions under Rule 11 are appropriate. The Court finds that counsel for Plaintiffs has pursued "a path that a reasonably careful attorney would have

known, after appropriate inquiry, to be unsound." *In re TCI Ltd., supra.*

Accordingly, the Court finds that Plaintiffs' counsel has violated Rule 11 and awards $1,000.00 in sanctions to be paid by Plaintiffs' counsel, Janice Hayes, to Defendant GHANEM, $1,000.00 to Defendant BYER and $1,000.00 to Defendant LAS VEGAS MEDICAL CENTER, such sanctions to be paid on or before June 12, 1987.

IT IS SO ORDERED.

DATED: May 21, 1987

/s/ Philip M. Pro
PHILIP M. PRO
United States Magistrate

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTATE OF KATHLEEN JO PRICE, et al., Plaintiffs-Appellants, vs. BALLY'S, formerly known as MGM, INC., and MGM GRAND HOTELS, INC., et al., Defendants-Appellees.	No. 87-2575 DC# CV-84-447-HDM Nevada (Las Vegas) ORDER (Filed April 20, 1989)

Before: WALLACE, ALARCON and NORRIS, Circuit Judges

Due to a defect in the Fed. R. Civ. P. 54(b) certification, this appeal was filed prematurely. Orders whose finality normally would depend upon a Rule 54(b) certification may be treated as final when the case has subsequently been reduced to final judgment. *Baker v. Limber*, 647 F.2d 912, 916 (9th Cir. 1981). Here, the district court entered the final judgment February 23, 1989. However, the court is informed that plaintiffs filed a timely post-judgment motion for reconsideration. Thus, jurisdiction remains in the district court. Accordingly, this appeal is dismissed.

MoCal 4/17/89
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ESTATE OF KATHLEEN JO PRICE etc., et al., Plaintiff, v. BALLY'S, INC., et al., Defendants.	CV-S-84-447-PMP ORDER (Filed June 15, 1989)

The Court having read and considered Defendants' Motion for Release of Funds (#354), filed May 3, 1989, on behalf of Elias Ghanem, M.D., Thomas Byer, M.D., and Las Vegas Medical Center, Plaintiff's Response in opposition thereto and Countermotion to Strike and for Sanctions (#359), filed May 22, 1989, and Defendants' Reply (#365), filed June 9, 1989, and good cause appearing,

IT IS ORDERED that Motion for Release of Funds (#354), filed on behalf of Defendants Ghanem, Byer and the Las Vegas Medical Center (#354), is granted, and the Clerk of Court shall forthwith release to Alverson, Taylor and Mortensen, Attorneys at Law, for the benefit Defendants Elias Ghanem, M.D., Thomas Byer, M.D., and the Las Vegas Medical Center, the $3,000.00 deposited with the Clerk of Court deposited by Janice Hayes, Esq., on January 11, 1989, in satisfaction of this Court's Order awarding sanctions (#220) entered July 10, 1987.

IT IS FURTHER ORDERED that Plaintiff's Motion to Strike and for Sanctions (#359) is denied.

DATED: June 15, 1989

/s/ Philip M. Pro
Philip M. Pro
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ESTATE OF KATHLEEN JO PRICE, et al., Plaintiffs-Appellants, vs. BALLY'S, formerly know as MGM, Inc., and MGM GRAND HOTELS, INC. et al., Defendants-Appellees.	No. 87-2575 DC# CV-84-447-HDM Nevada (Las Vegas) ORDER (Filed Sep. 1, 1989)

Before: WALLACE, ALARCON and NORRIS, Circuit Judges

The motion for clarification is granted. In this appeal appellants sought review of, *inter alia*, the district court order of July 8, 1987 which imposed sanctions against appellants' counsel. An immediate appeal of this order was required because the order was final. *See Mesirow v. Pepperidge Farm, Inc.*, 703 F.2d 339, 345 (9th Cir. 1983). However, the district court had not yet entered an order disposing the appellants' timely motion for reconsideration. Hence, we lacked jurisdiction over the remaining issues. *See* Fed. R. Civ. P. 4(a)(4). Accordingly, this appeal is reinstated as to the July 8, 1987 sanctions order only.

Appellants shall file a new opening brief limited to the issues raised by the sanctions order within 30 days of the date of this order. Upon entry of this order, the Clerk shall set the balance of the briefing schedule.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ESTATE OF KATHLEEN JO PRICE, deceased, et al.,	)	Nos. 87-2575 89-16462
Plaintiffs/Appellants,	)	DC# CV-84-447-HDM
vs.	)	Nevada (Las Vegas)
NEVADA RESORT ASSOCIATION, et al.,	)	ORDER (Filed March 9, 1989)
Defendants/Appellees.	)	

Appellants' motion to file the civil appeals docketing statement for No. 89-16462 late is granted. The docketing statement previously received shall be filed.

Appellants' motions to file her opening briefs late are granted. The opening briefs received January 31, 1990 in No. 87-2575 and January 19, 1990 in No. 89-16462 shall be filed. The district court states the certificate of record for No. 89-16462 will be issued forthwith.

Although separate opening briefs have been filed in these appeals, the motion of appellee Ghanem, et al., to consolidate Nos. 87-2575 and 89-16462 is granted. All answering briefs are now due March 21, 1990. Appellees shall endeavor to comply with Ninth Cir. R. 28-4. The reply brief is due April 4, 1990.

This order is subject to reconsideration by a judge if any objection is filed within ten (10) days of the entry of the order.

For the Court:

Cathy A. Catterson
Clerk of the Court

/s/ Cole Benson
Cole Benson
Deputy Clerk

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTATE OF KATHLEEN JO PRICE, deceased; JANINE ADAMICK; JOSEPH ADAMICK, Plaintiffs-Appellants, vs. NEVADA RESORT ASSOCIATION; TRUSTEES OF NEVADA RESORT ASSOCIATION HEALTH AND WELFARE TRUST; ELIAS GHANEM; BALLY'S formerly known as MGM, INC. and MGM GRAND HOTELS, INC.; METROPOLITAN LIFE INSURANCE COMPANY; THOMAS BYER; MGM GRAND HOTELS AND CERTAIN SUBSIDIARIES; TRANSAMERICA OCCIDENTAL LIFE INSURANCE COMPANY; LAS VEGAS MEDICAL CENTER, Defendants-Appellees.	Nos. 87-2575 89-16462 D.C. No. CV-84-447-HDM D.C. No. CV-84-477-PMP MEMORANDUM* (Filed Nov. 21, 1990)

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding
Philip M. Pro, District Judge, Presiding
Argued and Submitted November 7, 1990
San Francisco, California

Before: BROWNING, PREGERSON, and TROTT, Circuit Judges.

Janice Hayes, attorney for the estate of Kathleen Jo Price, appeals the district court's orders (1) imposing Rule 11 sanctions against her in the amount of $3,000, (2) denying her motions for sanctions against Elias Ghanem, Thomas Byer, and the Las Vegas Medical Center (collectively the Medical Defendants), and (3) releasing the bond Hayes posted to obtain a stay pending her appeal of the order imposing sanctions against her. We affirm.

The district court did not abuse its discretion in imposing sanctions against Janice Hayes based on her numerous filings of frivolous papers. *See Cooter & Gell v. Hartmax Corp.*, 110 S.Ct. 2447, 2461 (1990). The court also acted within its discretion in refusing to award sanctions against the Medical Defendants. Hayes has not pointed to any conduct of the Medical Defendants that would justify the imposition of sanctions against them. Finally, the court did not err in releasing the bond given by Hayes pending her appeal (no. 87-2575) of the order imposing sanctions against her because on April 20, 1989, a panel of this court dismissed the appeal.

AFFIRMED.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ESTATE OF KATHLEEN JO PRICE etc., et al., Plaintiff, v. BALLY'S, INC., et al., Defendants.	CV-S-84-447-PMP ORDER (Filed Feb. 22, 1989)

Pursuant to the Court's Order of January 11, 1989 (#323), the parties to this action have submitted status reports to the Court regarding the issues of whether, and to what extent, further Judgments must be entered in this case to finalize all proceedings and enable Plaintiff to perfect appropriate appeals. (Documents #326, #330, #331, #333 and #334.) The Court having read the status reports submitted, and in accordance with the provisions of Rule 58 of the Federal Rules of Civil Procedure,

IT IS ORDERED that the Clerk of Court shall forthwith enter Judgment in favor of Defendants and against Plaintiffs in accordance with the Court's Order Dismissing this action entered August 10, 1988 (#305).

DATED: February 21, 1989

/s/ Philip M. Pro
Philip M. Pro
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ESTATE OF KATHLEEN JO PRICE, deceased, by its administratrix, Janine Adamick; JANINE ADAMICK, individually; and JOSEPH ADAMICK, individually,

Plaintiffs,

v.

BALLY'S GRAND, INC.; METROPOLITAN LIFE INSURANCE CO., a New York insurance corporation; and DOES I-X, inclusive,

Defendants.

CV-S-84-447 HDM

ORDER ADOPTING MAGISTRATE'S ORDER

(Filed July 8, 1987)

On May 21, 1987, following a hearing at which arguments were heard in support of and in opposition to defendants, Ghanem, Byer and Las Vegas Medical Center's motion for sanctions, document number 154, United States Magistrate Philip M. Pro entered an order imposing sanctions in the amount of $3,000.00 against Janice M. Hayes, counsel for plaintiffs. Document number 193. Plaintiffs filed objections to the Magistrate's Order on June 5, 1987. Document number 198. Having considered the above-referenced pleadings, memoranda of the parties, and other relevant and timely filed matters of record, and having made a *de novo* review and determination in accordance with the requirements of 28 U.S.C. § 636 and the applicable case law, *e.g.*, *Campbell v. United States District Court*, 501 F.2d 196, 206 (9th Cir. 1974), that the

Magistrate's Order is correct and not contrary to law, the Court hereby

AFFIRMS the Order of the United States Magistrate designated above (#193), and DENIES and OVERRULES plaintiffs' opposition and objections (#198). Accordingly,

IT IS ORDERED that plaintiffs' counsel, Janice M. Hayes, shall pay $1,000.00 in sanctions to defendant Ghanem, $1,000.00 in sanctions to defendant Byer, and $1,000.00 in sanctions to defendant Las Vegas Medical Center. After reviewing the numerous pleadings, motions, and other papers filed by plaintiffs' counsel in this case, the Court agrees with the Magistrate that most of these documents are so without factual and legal foundation as to be considered "frivolous or unreasonable." *Zaldivar v. City of Los Angeles*, 590 F. Supp. 852, 857 (C.D. Cal. 1984); *see also Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537-38 (9th Cir. 1986); *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir. 1986); *Orange Production Credit Association v. Frontline Ventures Limited*, 792 F.2d 797, 800 (9th Cir. 1986). By filing such meritless motions, plaintiffs' counsel has forced defendants Ghanem, Byer and Las Vegas Medical Center to continue as parties in this litigation, incurring substantial costs, for more than fourteen months after they were dismissed by order of the Court. Plaintiffs' counsel has provided no justification for pursuing such a course of action – one which "a reasonably careful attorney would have known, after appropriate inquiry, to be unsound." *In re TCI Limited*, 769 F.2d 441, 445 (7th Cir. 1985); *see also Thornton v. Wahl*, 787 F.2d 1151, 1154 (7th Cir. 1986). Therefore, the Court concludes that Rule 11 sanctions are appropriate.

IT IS SO ORDERED.

DATED this 8th Day of July, 1987.

/s/ D. McKibben
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

ESTATE OF KATHLEEN JO PRICE, etc., et al., Plaintiffs, vs. MGM GRAND HOTELS, INC., et al., Defendants.	Civil-S- 84-447-PMP MINUTES OF THE COURT Dated: December 16, 1987

PRESENT:

THE HONORABLE HOWARD D. McKIBBEN
UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: PRESTON BLUIETT, JR.

REPORTER: HAROLD ST. THOMAS

COUNSEL FOR PLAINTIFF(S): JANICE M. HAYES

COUNSEL FOR DEFENDANT(S): ANDREW S. BRIGNONOE for MGM, Nevada Resort Association; Burton Cohen and Arlene Sondgeroth; BRYAN K. GOULD for Byer, Ghanem & Las Vegas Medical Center; JOHN P. FOLEY for Metropolitan Life Insurance; and Gloria J. Sturman for Transamerica Occidental Life.

MINUTE ORDER IN CHAMBERS_____

IN COURT PROCEEDINGS: ORAL ARGUMENT ON:

1. RECONSIDERATION OF THE PLAINTIFFS' MOTION FOR STAY (#241 ENTITLED: Ex

Parte Motion . . . to Vacate Order, etc.), filed August 19, 1987;

2. DEFENDANT BALLY'S MOTION FOR ALLOWANCE OF ATTORNEYS' FEES UNDER TITLE VII (#240), filed August 14, 1987; and

3. THE MEDICAL CENTER DEFENDANTS' MOTION TO REQUIRE BOND (#248), filed September 9, 1987.

9:31 a.m. court convenes.

After hearing the arguments of counsel. IT IS ORDERED that the Plaintiffs' Application for a Stay Pending Appeal is granted provided that, within fifteen (15) days from this date, the Plaintiffs post with the Clerk of this Court a surety bond or cash in the amount of $3,000.00. IT IS FURTHER ORDERED that Defendant Bally will be allowed attorneys' fees in the sum of $3,500.00. Bally's counsel is directed to prepare and submit a proposed final judgment for the Court's approval.

CLERK, U.S. DISTRICT COURT

By: /s/ Preston Blviett, Jr.
Preston Blviett, Jr.

9:57 a.m. adjournment.